IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-370

SCHOOL DISTRICT OF PHILADELPHIA, *Petitioner*
v.
CHARLES J. LAFFERTY, JOHN W. LAFFERTY,
RONALD C. LAFFERTY AND MARY LAFFERTY, *Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE PENNSYLVANIA SUPREME COURT

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TABLE OF AUTHORITIES

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PETITION FOR WRIT OF CERTIORARI TO THE PENNSYLVANIA SUPREME COURT

Petitioner, the School District of Philadelphia, respectfully prays that a writ of certiorari issue to review the Order of the Pennsylvania Supreme Court entered on June 8, 1979, denying its petition for allowance of appeal in this proceeding.

OPINIONS BELOW

The Order of the Pennsylvania Supreme Court dated June 8, 1979, is not reported; the official notice of the entry of the Order is printed in the Appendix hereto (A1). The Order of the Pennsylvania Commonwealth Court quashing the District's appeal is not reported, but is printed in the Appendix (A6). The Opinion and Order of the Court of Common Pleas of Philadelphia County denying the District's petition to quash mandamus and to strike judgment are not reported and are printed in the Appendix (A7). The earlier opinions and orders of each of the above courts relating to the District's motion for new trial are also printed in the Appendix (A22, A30, A40, A46). The Opinion of the Pennsylvania Commonwealth Court in that connection is reported at 27 Pa. Comm. Ct. 80, 365, A.2d 1322 (1976).

JURISDICTION

The Order of the Pennsylvania Supreme Court was entered on June 8, 1979. This petition for certiorari was filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. Should *United States v. Throckmorton*, 98 U.S. 61 (1878), holding that judgments obtained by perjury and other intrinsic fraud are not subject to subsequent attack, be expressly overruled as violative of the due process clause of the Fourteenth Amendment to the United States Constitution?

2. Does the peremptory denial by a state court of a petition to strike a judgment entered by the court in a civil action, which petition is based upon an admission made by

the prevailing party during the course of a subsequent criminal trial for perjury that his earlier material testimony in the civil trial was false, constitute a violation of due process as protected under the Fourteenth Amendment to the United States Constitution where the perjurious testimony prevented the defrauded party from effectively presenting its case?

CONSTITUTIONAL PROVISION INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides, in pertinent part, as follows:

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This matter arises out of the condemnation by the School District of Philadelphia ("District") of real estate owned by Charles J. Lafferty, John W. Lafferty, Ronald C. Lafferty and Mary Lafferty ("Owners") and used as a machine shop. The Owners, in vacating the premises, left machinery and equipment, nearly all of which was in excess of 28 years of age and had been purchased used.

In the eminent domain proceeding, tried before a jury in the Court of Common Pleas of Philadelphia County, Owners claimed damages for the machinery and equipment, as well as the real estate, asserting that the machinery could not be moved without substantial injury thereto. This assertion was based upon the testimony of one of the Owners, Charles J. Lafferty, that the machinery

had been weakened by the enlargement of holes in the base for the purpose of replacing the original bearings with bearings of a different type and larger size.[1] Mr. Lafferty's testimony concerning these modifications was also relied upon by Owners' expert witnesses in expressing opinions as to the value of the machinery and equipment. The jury rendered a verdict in Owners' favor in the total amount of $962,000.00, including a special finding of $700,000.00 for the machinery and equipment.[2]

Subsequent to the trial, the District discovered evidence which indicated that the machinery was in fact not modified as testified by Mr. Lafferty. This "after discovered evidence" was included by the District as one of numerous grounds for seeking a new trial. The District's motion for a new trial was denied by the trial court (A22), which denial was affirmed by the Pennsylvania Commonwealth Court (A30). Petitions for allowance of appeal and reconsideration thereof were, after a period of 1½ years, denied by the Pennsylvania Supreme Court (A46), this last action occurring on August 3, 1978.

After the civil trial and the affirmance by the Pennsylvania Commonwealth Court, Charles J. Lafferty was indicted and tried for perjury as to his testimony during the condemnation proceedings. At the trial on the perjury charges,[3] held in February and March 1978, Mr. Lafferty specifically admitted the falsity of his civil trial testimony. He stated in answers to direct questions that the testimony he gave before the civil jury as to the replacement of the bearings and enlargement of the holes in the machinery

1. Excerpts from Mr. Lafferty's testimony in the eminent domain trial are reproduced in the Appendix (A47-A61).

2. The District's expert witness, on the other hand, testified that, on the assumption that the machinery and equipment had not been modified, it could be moved to Owners' new location for a cost of $51,000.00.

3. Relevant excerpts from Mr. Lafferty's testimony in the criminal trial are reproduced in the Appendix (A-62-A66).

was false (A62-A66); that he fabricated his testimony in this respect on the morning that he took the stand (A64); and that he had not testified as to this subject before the Board of View (A66). A guilty verdict was returned against Mr Lafferty on March 27, 1978. The trial judge reversed the guilty verdict on the basis of excess prosecutorial misconduct and directed a new trial. The trial judge denied Lafferty's motion in arrest of judgment (directed verdict). Lafferty has appealed this denial and his appeal is presently pending in the Superior Court of Pennsylvania.

The District awaited the ruling on its petition for appeal by the Pennsylvania Supreme Court and, when it was denied on August 3, 1978, filed a petition in the eminent domain proceedings seeking, *inter alia*, to strike the judgment ("petition to strike judgment") on the basis of Mr. Lafferty's admission during the criminal trial that his testimony in the condemnation proceedings was *false*. In support of its petition to strike judgment the District advanced the fundamental precept that enforcement of a judgment resting upon perjurious testimony constitutes a deprivation of due process of law in violation of the Fourteenth Amendment to the United States Constitution. By Order dated February 14, 1979 (A13), the trial court denied the petition to strike the judgment without addressing the constitutional issue. The Court recognized that it had the power to strike the judgment if it had been obtained by means of "extrinsic fraud". It held, however, that under Pennsylvania law, there was ". . . no basis for the Court to . . ." strike the judgment due to admittedly false testimony, because false testimony constitutes "intrinsic" fraud (A10-11).

Without permitting the District to present an argument upon the merits, the Pennsylvania Commonwealth Court, on April 16, 1979, quashed the District's appeal from the denial of the petition to strike judgment on the ground that the appeal constituted ". . . an effort to collaterally attack the judgment in the eminent domain proceedings" (A6). A

petition for allowance of appeal to the Pennsylvania Supreme Court, which was expressly grounded upon the due process clause of the Fourteenth Amendment, was denied without opinion.

REASONS FOR GRANTING THE WRIT

The refusal by the Pennsylvania state courts to strike the judgment entered in Owners' favor in the eminent domain action despite, in a subsequent criminal trial for perjury based on perjurious testimony in the eminent domain proceedings, the *judicial admission* by Charles J. Lafferty that his testimony was knowingly false, constitutes a violation of the due process clause of the Fourteenth Amendment to the United States Constitution under the standards established by the decisions of this Court. Moreover, the state courts, in refusing to strike the judgment for admitted false testimony, relied upon this Court's decision in *United States v. Throckmorton*, 98 U.S. 61 (1878), which was undermined by this Court's subsequent opinion in *Marshall v. Holmes*, 141 U.S. 589 (1891), and which has been nullified in federal practice by the promulgation of Rule 60(b)(3) of the Federal Rules of Civil Procedure.

1. This Court Should Overrule United States v. Throckmorton, 98 U.S. 61 (1878), Because Its Continued Existence Leads to Conflict and Confusion, and Decisions Which Are Grossly Unjust and Violative of Due Process.

The state trial court denied the District's petition to strike judgment principally on the basis of this Court's opinion in *United States v. Throckmorton, supra*, and upon Pennsylvania appellate decisions which in turn also expressly relied upon *Throckmorton*. See, *e.g, Sallada v. Mock*, 277 Pa. 285, 121 A. 54 (1923); *Greiner v. Brubaker*, 151 Pa. Super. 515, 30 A.2d 621 (1943), cert. denied. 320

U.S. 742, rehearing denied, 320 U.S. 813, rehearing denied, 320 U.S. 816 (1943). Those decisions make a distinction between judgments obtained by extrinsic fraud, which are subject to subsequent attack, and judgments obtained by intrinsic fraud, such as perjury, which are not.

Throckmorton was decided by this Court solely as a matter of federal procedural law and did not discuss the problem as involving a constitutional issue. The principal reasoning in support of the distinction made in *Throckmorton* between judgments obtained by extrinsic and intrinsic fraud was to preserve the sanctity of judgments with respect to factual issues previously litigated, whether or not the defrauded party was unfairly prevented from properly litigating the facts because of the fraud. Aside from the difficulty in distinguishing whether a particular fraud is intrinsic or extrinsic within the rule, it is further impossible to distinguish the effect on the finality of a judgment if challenged on the ground of extrinsic fraud or intrinsic fraud. In either event, the factual issues already litigated must be retried. In both events, the question should be whether a party has been improperly prevented from fully contesting the factual issues, and not whether the judicial system will be inconvenienced by the relitigation of a matter previously litigated.

Moreover, this Court, in its subsequent opinion in *Marshall v. Holmes, supra*, expressed a view that at least some civil judgments obtained by intrinsic fraud should be set aside on grounds substantially similar to the standards of due process (141 U.S. at 596):

> "While, as a general rule, a defense cannot be set up in equity which has been fully and fairly tried at law, and although, in view of the large powers now exercised by courts of law over their judgments, a court of United States, sitting in equity, will not assume to control such judgments for the purpose simply of giving a new trial, it is the settled doctrine

that '*any fact which clearly proves it to be against conscience to execute a judgment, and of which the injured party could not have availed himself in a court of law,* or of which he might have availed himself at law, but *was prevented by fraud or accident, unmixed with any fault or negligence in himself or his agents, will justify an application to a court of chancery.*' . . ." (Emphasis added.)

More recently, this Court, although citing both *Throckmorton* and *Marshall,* did not find it necessary to distinguish between extrinsic and intrinsic fraud where the issue was relief from a judgment because of fraud perpetrated upon the court which rendered the judgment. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.,* 322 U.S. 238 (1944).

Several federal courts and commentators, including one of the most respected commentators in the field, have perceived and wrestled with the conflict between this Court's decisions in *Throckmorton* and *Marshall. Griffith v. Bank of New York,* 147 F.2d 899 (2d Cir. 1945), cert. den., 325 U.S. 874 (1945); *Publicker v. Shallcross,* 106 F.2d 949 (3d Cir. 1939), cert. den., 308 U.S. 624 (1940); *Graver v. Faurot,* 64 F. 241 (C.C.N.D. Ill. 1894), rev'd 76 F. 257 (7th Cir. 1896), cert. dism'd, 162 U.S. 435 (1896); *Lockwood v. Bowles,* 46 F.R.D. 625 (D.D.C. 1969); 7 *Moore's Federal Practice* ¶60.37 [1], at 615-620.

Indeed, in *Publicker v. Shallcross, supra,* the Court of Appeals for the Third Circuit stated that "we do not believe it [Throckmorton] is the law of the Supreme Court today". 106 F.2d at 950. That Court, after extensive analysis, further stated (106 F.2d at 952):

> "In our judgment, and if the case arises, the harsh rules of United States v. Throckmorton . . . will be modified in accordance with the more salutary doctrine of Marshall v. Holmes . . . We believe truth is more important than the trouble it takes to get it."

In his treatise Professor Moore has been equally critical of strict adherence to *Throckmorton* and its progeny. See 7 *Moore's Federal Practice, supra.*

Moreover, this Court has, for federal practice, expressly overruled the distinction between intrinsic and extrinsic fraud by promulgating Rule 60(b)(3) of the Federal Rules of Civil Procedure. That Rule allows federal district courts to provide relief from a final judgment for reasons of fraud "whether heretofore denominated intrinsic or extrinsic". The same rationale of fairness which caused the promulgation of Rule 60(b)(3) should be applied to state court proceedings as a matter of basic due process. This is certainly the view of some state courts which follow a rule, contrary to *Throckmorton,* of permitting judgments obtained by intrinsic fraud to be set aside. *Boring v. Ott,* 138 Wis. 260, 119 N.W. 865 (1909); *Laun v. Kipp,* 155 Wis. 347, 145 N.W. 183, 5 A.L.R. 655 (1914).[4]

A judgment based upon fraud should have no validity in our society and should be subject to being stricken where the fraud has prevented the defrauded party from effectively presenting his case. It is the District's position, moreover, that such relief must be afforded by the federal courts and state courts a matter of due process of law under the Fifth and Fourteenth Amendments to the United States Constitution. To the extent *Throckmorton,* read in light of *Marshall v. Holmes,* can be so interpreted, this Court should issue a writ of certiorari to correct the improper reliance by the state courts upon *Throckmorton* and its progeny. To the extent that *Throckmorton* states a contrary rule of law, this Court should issue a writ of certiorari to overrule *Throckmorton* expressly so that the state courts will no longer render misguided and unconstitutional decisions predicated upon it.

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4. For a recitation of the confusion and conflict which *Throckmorton* has created, see 7 *Moore's Federal Practice, supra.*

2. The State Courts' Refusal To Strike a Judgment Obtained by Intentionally False Testimony Violates the Due Process Standards Established by This Court and Impugns the Integrity of the Nation's Judicial Process by Encouraging Perjury.

The judgment entered in Owners' favor in the state eminent domain proceedings was fraudulently obtained by the admitted false testimony of one of the Owners, Charles J. Lafferty. Notwithstanding this reprehensible conduct by a party and principal witness in the action, the state courts not only refused to strike or vacate the judgment on the basis of Mr. Lafferty's false testimony, but refused even to hold a hearing to determine the facts relating to Mr. Lafferty's admission that he had testified falsely. Although a state procedure exists to set aside judgment obtained by fraud, the state courts ruled that this procedure does not apply to judgments obtained by false testimony (A10-11).

Mr. Lafferty's false testimony was material to the determination of damages and deprived the District of a fair hearing with respect to the value of the condemned property. The insufficiency of the hearing is emphasized by Mr. Lafferty's further admissions during the criminal trial that he had not testified as to the replacement of the bearings in the original hearing before the Board of View and did not formulate his testimony regarding the bearings until the morning that he testified. The District could not possibly have anticipated Mr. Lafferty's testimony in this respect and was unable to effectively cross-examine him with regard thereto.

Where state court procedures effectively prevent a litigant from receiving a fair hearing, this Court has found such procedures to violate constitutional due process. *Armstrong v. Manzo*, 380 U.S. 545 (1965); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

The action of the state courts in refusing to strike the judgment and in permitting the judgment to be enforced,

notwithstanding Mr. Lafferty's admission that his testimony was false has effectively deprived the District of a hearing. By espousing a rule that judgments obtained by false testimony will not be stricken under any circumstances, the state courts have given the appearance of encouraging litigants to give false testimony, provided that falsity thereof can be concealed until after judgment has been entered. Such an appearance may seriously undermine public faith in the integrity of our judicial system and should not be countenanced, especially where, as here, the defrauded party deals with public funds.

On numerous occasions this Court has ruled that a criminal conviction obtained by the use of false testimony is constitutionally tainted and must be set aside and vacated for lack of due process. See, *e.g., Giglio v. United States*, 405 U.S. 150 (1972); *Napue v. Illinois*, 360 U.S. 264 (1959); *Mooney v. Holohan*, 294 U.S. 103 (1935).

Although these cases have all involved instances where the falsity of the testimony was known or should have been known to the prosecutor, a careful reading of this Court's opinions in these and other cases indicates that the standards of due process are not so restricted. Indeed, in *Mooney v. Holohan*, 294 U.S. at 113, this Court recognized that due process may be denied by *"any action of a state,* 'whether through its legislature, *through its courts,* or through its executive or administrative officers' ". (Emphasis added.) In this regard, the petitioner has argued that (294 U.S. at 110):

> "[t]he state deprives him of his liberty by its failure, in the circumstances set forth, to provide any corrective judicial process by which a conviction so obtained may be set aside."

The Court accepted this premise as correct, but denied relief to the petitioner because a state corrective process existed which petitioner had failed to exhaust. In recognizing that the failure of a state court to provide corrective

judicial process to remedy an alleged wrong is a denial of due process, the Court cited *Frank v. Mangum*, 237 U.S. 309 (1915) and *Moore v. Dempsey*, 261 U.S. 86 (1923), in which the alleged wrongs were caused by private individuals, not state officials.

In *Mapp v. Ohio*, 367 U.S. 643 (1961), this Court confronted the issue of whether state courts should be forced to adopt, as a matter of constitutional due process, a rule of exclusion of illegally seized evidence in criminal prosecutions. On the one hand, the Court conceded that such a rule might permit some criminals to go free because "a constable has blundered". On the other hand, the Court could find no other corrective judicial process which would ensure that individuals' constitutional rights would be honored by law enforcement officials. Possibly the determinative factor in favor of constitutional application of the exclusionary rule was what the Court referred to as "the imperative of judicial integrity".

In the present case, there is also "the imperative of judicial integrity"—litigants should not be led to believe that there is any possible advantage to be gained by perjury. Weighted against that imperative is the legitimate interest in finality of judgments. The District submits that this interest is less weighty than the integrity of the judicial system. Any rule of law which peremptorily precludes an attack upon a judgment procured by testimony which the witness, in his subsequent perjury trial, admits to have been false on a material issue, must be held to violate due process. A failure so to find would effectively deny the defrauded party a fair hearing, impugn the integrity of the judicial system, and encourage perjury.

This Court should grant certiorari to resolve this important constitutional issue which goes to the very integrity of our judicial system, especially since the decisions of the state courts which deny due process are predicated upon a now emasculated, but never overruled, decision of this Court.

CONCLUSION

For the above reasons, a writ of certiorari should issue to review the order of the Pennsylvania Supreme Court.

Respectfully submitted,

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APPENDIX A.

Notice of Order of the Pennsylvania Supreme Court Denying the Petition for Allowance of Appeal of the Philadelphia School District.

SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

SALLY MRVOS
Prothonotary
CATHERINE E. LYDEN
Deputy Prothonotary

456 City Hall
Philadelphia, 19107
(215) 686-3581/84

June 11, 1979

Eugene F. Brazil, Esq.,
The School District of Philadelphia
21st and the Parkway
Phila., Pa. 19103

In re: Charles J. Lafferty et al., v.
The School District of Philadelphia
et al., Petitioner.
No. 4270 Allocatur Docket

DEAR MR. BRAZIL:

This is to advise you that on June 8, 1979 the Supreme Court entered its Order denying the Petition for Allowance of Appeal in the above-captioned matter.

Very truly yours,

Sally Mrvos
Prothonotary

SM:mb
CC: Augustus Sigismondi, Esq.

APPENDIX B.

Petition for Allowance of Appeal to Pennsylvania Supreme Court from Order of Commonwealth Court Quashing Appeal from Denial of Petition to Strike Judgment.

IN THE
SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

CHARLES J. LAFFERTY, JOHN W. LAFFERTY, RONALD LAFFERTY AND MARY LAFFERTY	:	
vs.	:	No. 4270
THE SCHOOL DISTRICT OF PHILADELPHIA, ET AL.	:	

PETITION FOR ALLOWANCE OF APPEAL

The Petitioner, The School District of Philadelphia, through its General Counsel, Eugene F. Brazil, files a Petition for Allowance of Appeal as follows:

1. The School District of Philadelphia condemned the premises belonging to Charles Lafferty, et al. on February 5, 1970.

2. The Plaintiffs vacated the property on September 6, 1972, leaving machinery and equipment in the buildings and claiming that the machinery and equipment could not be moved without substantial injury to the machinery.

3. In a jury trial on June 25, 1974 the jury awarded damages to the Plaintiff in the amount of $700,000 for the machinery and equipment. The School District's witness testified that the machinery and equipment were movable and could be moved for $51,000.

4. The Plaintiff testified at this trial that the machinery could not be moved because the bore holes in the machine were enlarged, thereby weakening the base of the machine and that old-fashioned sleeve bearings were replaced with modern roller bearings, all of which prevented the machines from being moved.

5. Subsequent to the trial, The School District of Philadelphia filed motions for a new trial. One of the reasons given for a new trial was after discovered evidence.

6. Subsequent to the denial of a new trial, Defendant, School District, continued its examination of Plaintiff's machines and determined that there was large scale falsehood in the testimony of Plaintiff. The matter was referred to the District Attorney's office and Plaintiff was tried for perjury. The Plaintiff in the criminal trial admitted under oath that he lied wih respect to changing the size of the holes and the bearings in these machines. This information was not available to the trial court in denying the motion for a new trial, was not available to the Commonwealth Court in affirming a motion for a new trial, and was not available to the Pennsylvania Supreme Court in its denial for a Petition for Allowance of Appeal.

7. Petitioner, The School District of Philadelphia, has been denied its day in court. The Plaintiff's verdict is tainted by massive perjury.

The following testimony is taken from the Plaintiff's testimony in the criminal trial, in which he was a defendant, at Page 529:

"Q. Now, Sir, it's your testimony today that you testified as to certain information at that other trial, namely sleeve bearings and — excuse me — sleeve bearings and taper roller bearings, that you testified falsely. Is that correct?

A. Yes, I did.

Q. Sir, as to the size of the holes and the base of the machine, you testified falsely?

A. Yes, I did.

Q. And as to boring out those hubs behind the base of the machine, you testified falsely?

A. Yes, I did."

8. The lower court refused to consider the testimony of Charles J. Lafferty in the criminal case. The opinion of the lower court is attached hereto and marked Exhibit "A."

9. The trial judge in the condemnation case refused to hear Petitioner's Petition to Strike the Judgment, thus requiring the matter to be heard by a judge that was unfamiliar with the matter. It is Petitioner's contention that the perjury of Plaintiff was an affront to the dignity of the trial judge, and his refusal to hear the Petition to Strike the Judgment was error.

10. The rule that intrinsic evidence is not a basis for striking a judgment should only pertain to cases where the party had reason to know of the evidence prior to trial and not in a case such as this, where the Plaintiff in defending himself in the criminal case characterized his testimony in the civil case with the following language at Page 510:

"It makes no sense to me whatsoever."

This area of the law requires a thorough review by the Pennsylvania Supreme Court in light of the new standard of morality in the post Watergate era.

11. The Commonwealth Court erred in quashing Petitioner's appeal. A copy of the Order quashing the appeal is attached hereto as Exhibit "B." Petitioner had averred in its response to Mandamus Execution that all funds had been appropriated for the current fiscal year. The lower court directed that the judgment be paid in 30 days. If funds are required to keep the schools in operation and pay bond indebtedness, the judgment is to be paid from unappropriated funds and no contempt lies in such a case. Act of March 10, 1949, P.L. 30 Art. 21, §611, 24 P.S. §6-611; *Arlington Seating Co. v. New Phila. School District*, 317 Pa. 179.

12. The School District is presenting this case in a posture different from the situation when the matter was previously heard by your Honorable Court. To deny the Petitioner the opportunity to fully present its case would be a denial of due process under the United States Constitution.

To let this judgment stand will penalize the children of The School District of Philadelphia and deprive them of funds vitally needed for the educational program. To allow a judgment to stand where the underlying testimony is false rewards a wrongdoer.

Your Petitioner believes that an appeal should be allowed.

Respectfully submitted,

EUGENE F. BRAZIL
Attorney for The School District of Philadelphia

APPENDIX C.

Order of Pennsylvania Commonwealth Court Quashing Appeal from Denial of Petition to Strike Judgment.

IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

THE SCHOOL DISTRICT OF PHILADELPHIA :
Appellant:

v. :

CHARLES J. LAFFERTY et al., :
Appellees: No. 542 C. D. 1979

ORDER

NOW, April 16, 1979, upon consideration of appellees' motion to quash and appellant's answer thereto, and it appearing that the appeal is an effort to collaterally attack the judgment in the eminent domain proceedings, a judgment which must be considered final in light of the affirmance by this Court and the Supreme Court's denial of allowance of appeal, the motion to quash is granted and the appeal is dismissed.

BY THE COURT:

s/ JAMES S. BOWMAN
P.J.

Certified From The Record
April 16, 1979
Francis C. Barbush
Chief Clerk

APPENDIX D.

Opinion and Order of the Court of Common Pleas of Philadelphia, County Denying Petition to Strike Judgment.

IN THE
COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
CIVIL DIVISION

CHARLES J. LAFFERTY, : FEBRUARY TERM, 1979
JOHN W. LAFFERTY, :
RONALD LAFFERTY, AND No. 942
MARY LAFFERTY :

vs. :

THE SCHOOL DISTRICT OF
PHILADELPHIA :

OPINION

DOTY, J.

This case comes before the Court on two different petitions and motions.

In the first, the plaintiff, on October 13, 1978, filed a praecipe for a writ of mandamus execution to enforce a judgment entered more than four years previous. The prothonotary issued said writ and directed that the School District pay $962,000 with interest and costs. A writ of this kind requires no rule or return date and is issued as a matter of course where the judgment is final. The School District was served with the writ on October 17, 1978. The plaintiff, on October 31, 1978, then filed a petition for a writ of attachment with a rule granted upon the defendants (all of the School Board members and the Superintendent of Schools in his capacity as Secretary and Treasurer of

the School Board) to show cause why they should not be held in contempt. The petition was scheduled for argument in Motion Court on November 20, 1978, before the Honorable Ethan Allen Doty.

The defendants did not file an answer to the plaintiffs' petition. Instead, they filed a petition and had a rule granted upon the plaintiffs to show cause why the writ of mandamus execution should not be quashed and why the judgment in this matter should not be stricken. As with the first petition, this one was also scheduled for argument at the same time and place. Counsel for both sides appeared at the hearing and counsel for the plaintiffs submitted his answer to defendants' petition. After oral argument the Court concluded that certain questions of law required more extensive research. On December 7, 1978, plaintiff submitted his supplemental brief on the matter and on December 18, 1978, the defendant presented his supplemental answer brief.

Charles J., John W., and Ronald C. Lafferty are partners who owned a building at 1617-25 South Bambrey Street and the northwest corner of Morris and Bambrey Streets, Phila., Pa., where they manufactured forged steel threaded fittings of high precision standards for use in chemical plants, oil refineries, atomic plants, shipyards, and on jobs wherever high pressure and high temperature tolerances were required.

The above real estate was condemned, including all of the machines, fixtures and equipment contained therein, when the School District of Philadelphia filed a declaration of taking with the prothonotary on February 5, 1970. Upon a motion filed by the School District the Honorable Ned L. Hirsh entered a decree on May 14, 1970, appointing a three member Board of View to assess damages. The Board met and heard testimony on November 17, and 30, 1970.

On June 30, 1971, Judge Hirsh ordered that the plaintiffs vacate the premises and on September 6, 1972, the

defendants were given possession of the property with all of the machinery, fixtures and equipment in place.

The Board of View filed a final report on November 9, 1972, in which $1,255,400 was awarded to the plaintiffs.

An appeal was taken by the School District to the Board's decision on the ground that the amount awarded was not the fair market value. The exceptions were filed on November 24, 1972.

The case then came up for trial in Common Pleas Court before the Honorable Jacob Kalish, and a jury, on June 17th through 25th, 1974. The jury returned a verdict for the plaintiffs in the amount of $962,000.

The School District filed its motion for a new trial on July 1, 1974 and submitted additional reasons in support of its motion on August 15, 1975. On September 12, 1975, Judge Kalish dismissed the defendant's motion. A praecipe for judgment was filed on September 22, 1975, and notice was sent to the defendant.

The trial court filed its opinion on October 23, 1975. On November 16, 1976, the Commonwealth Court (D.C. 1448, of 1975) affirmed the trial court's decision and dismissed the appeal.

The School District then filed a petition for allocatur to the Supreme Court of Pennsylvania on December 14, 1976 (Allocatur Docket #2821) which was denied per curiam on June 17, 1977.

On June 27, 1977, the School District filed a petition with the Supreme Court for reconsideration of allowance of appeal. Reconsideration was denied, as stated below.

On August 22, 1977, an information was filed by the District Attorney's Office against Charles J. Lafferty, Jr. charging him with violation of 18 P.S. Section 4902 — Perjury (August Term, 1977, No. 1499).

The criminal case came up for trial on February 24, to March 6, 1978, before the Honorable Levy Anderson, and a jury, and resulted in a verdict of guilty. Immediately following the trial on March 8, 1978, the School District

filed a supplemental petition for reconsideration of allowance of appeal to the Supreme Court informing them of the outcome of the criminal proceedings.

The defendant Charles J. Lafferty, Jr., filed post trial motions seeking an arrest of judgment or in the alternative a new trial. On September 13, 1978, Judge Anderson denied the defendant's first request but did grant the motion for a new trial on the basis of extensive prosecutorial misconduct. The defendant filed an appeal, as to the trial court's denial of his motion in arrest of judgment, which is still pending. As of this time no new trial date has been assigned.

The Pennsylvania Supreme Court, on August 3, 1978, filed a per curiam order which denied the School District's petition for reconsideration.

The School District, from the time it filed its post trial motions to the verdict in the eminent domain case to the present, has argued, time and time again, that the plaintiff Charles J. Lafferty, Jr., testified falsely when he stated that certain modifications were made to two 11 inch Goss and De Leeuw machines and as such they were immovable. Each and every time, the School District's petition has been denied.

For the reasons stated below the School District's petition must once again be denied.

Since the suspect testimony in this case clearly falls within the classification of "intrinsic" fraud there is no basis for the court to grant the School District's petition on this theory.

In *D'Allesandro v. D'Allesandro,* 48 Wash. Co. 86 (Dec. 31, 1967), the Court, quoting with approval the case of *Willetts vs. Willetts;* 96 Pa. Super. Ct. 198 (1929), which in turn quotes the leading case of *Throckmorton v. U.S.* 98 U.S. 93 (1873), the court said:

> "Where the alleged perjury relates to a question upon which there was a conflict, and it was necessary for the court to determine the truth or falsity of the testimony, the fraud is intrinsic, and is concluded by the judgment."

In *Sallada et al v. Mock,* 277 Pa. 285, 121 A.54 (1923), the court said that judgments obtained by fraud may be corrected, but,

> "Perjury, however, is not as a rule considered such fraud as warrants the vacation of a judgment, especially where the evidence was actually presented and considered in the judgment assailed: 15 R.C.L. Sec. 157, page 705; or as stated in *McEvoy v. Quaker City Cab Co.,* 267 Pa. 527, 534 'the court will not set aside a judgment because it was founded on a fraudulent instrument or perjured evidence, or for any matter which was actually presented and considered in the judgment assailed.' It would disturb the integrity of judgments and unduly prolong litigation if . . . they were to be opened because of misstatements, fraud or perjury in items of evidence, *especially when not vital to the case.*" (emphasis added)

A judgment obtained after full hearing will not be opened for "intrinsic" as distinguished from "extrinsic" fraud, and perjury is "intrinsic" in nature. *Greimer v. Brubaker, 151 Pa. Super. 515, 30 A. 2d 621, Certiorari Denied Royer v. Greimer 64 S. Ct. 42, 320 U.S. 742, 88 L. Ed. 440, rehearing denied, 64 S. Ct. 194, 320 U.S. 813, 88 L.Ed. 491, rehearing denied, 64 S. Ct. 434, 320 U.S. 816, 88 L.Ed. 493 (1943).*

The reason for the above stated rule is that there must be an end to litigation between the parties regarding the same subject matter.

Another basis for an attack on the judgment, which was presented to this Court by the School District, concerns itself with the question of "newly discovered evidence". In order for this Court to consider such a question,

the School District would have to meet the requirements as laid out in *Hydro-Flex, Inc. v. Alter Bolt, Co., Inc.*, 223 Pa. Super. Ct. 228, 296 A.2d 874 (1972). The Court in that case said that, in order for a party to be granted a new trial based on new evidence, he must show:

(1) the evidence is in fact new;
(2) it could not have been obtained *at* or before the trial with the exercise of due diligence;
(3) it is relevant and is not merely cumulative;
(4) it is not for the purpose of impeachment; and
(5) it must be likely to compel a different result. (emphasis supplied)

Without analyzing each and every requirement in minute detail, it is enough to note that the evidence was in fact not new, was available prior to the trial, and would be used merely for the purpose of impeaching credibility and not for substantive purposes. Therefore, it is not likely that it would produce a different result.

In addition, the trial court, in its opinion of October 25, 1975, considered this very point and rejected it:

> "The after-discovered evidence appears to be some evidence that at least some of the machines were not altered as Lafferty had testified. It is too late for this. Defendant had ample time before trial to discover this, if indeed, it was discovered. The most that can be said of this evidence is that it goes to credibility rather than the merits of this case."

If the trial court (Judge Kalish), which had all of the parties before it, and who was aware of all of the surrounding circumstances of the case, refused to re-open the matter, this court takes the position that it is precluded from overruling that decision in the absence of substantial and overwhelming new information being supplied to this Court which was not considered by the trial court and which meets the *Hydro-Flex*, supra, standard.

Furthermore, it now appears that in the criminal case before Judge Anderson a new trial has been granted and the case remains untried. Therefore, the petition and rule of the School District of Philadelphia to quash the writ of mandamus and strike the judgment must and is hereby DENIED.

There also appears to be no reason why mandamus should not issue and said issuance was proper and according to law.

ORDER

Therefore, this 14th day of February, 1979, the defendants: Arthur Thomas, President, Edward Oberholtzer, Vice-President, Augustus Baxter, Mrs. Lawrence Boonin, Samuel H. Rubin, Robert Sebastian, Esquire, Mrs. Mitchell Stack, George Philip Stahl, Esquire, Dr. Nicholas E. Trolio, and Dr. Michael P. Marcase, Secretary and Treasurer, individually and as members of the School Board of Philadelphia, and as officers thereof, are hereby ordered to comply with the order of this Court within 30 days hereof, and to pay the said judgment together with interest and costs out of any unappropriated funds of such School District and, in case there are no unappropriated funds of such School District, then out of the first funds that shall be received by said School District, or be held in contempt.

BY THE COURT:

s/ DOTY

J.

APPENDIX E.

Petition and Rule to Show Cause Why Writ of Mandamus Execution Should Not Be Quashed and Judgment Stricken.

The School District of Philadelphia
By: Eugene F. Brazil, Esquire
21st and The Parkway
Philadelphia, Pennsylvania 19103
(215) 299-7676
Identification No. 8302

Attorney for Petitioner

IN THE
COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY

CHARLES J. LAFFERTY,	:	
JOHN W. LAFFERTY,	:	
RONALD LAFFERTY AND	:	
MARY LAFFERTY	:	
vs.		FEBRUARY TERM, 1970
THE SCHOOL DISTRICT OF		NO. 942
PHILADELPHIA	:	

PETITION AND RULE TO SHOW CAUSE WHY WRIT OF MANDAMUS EXECUTION SHOULD NOT BE QUASHED AND JUDGMENT STRICKEN

1. The Petitioner is The School District of Philadelphia.

2. The Respondents are Charles Lafferty, John W. Lafferty, Ronald Lafferty and Mary Lafferty.

3. A Writ of Mandamus Execution issued on October 13, 1978, under the above Court, Term and Number, directing Petitioner to pay a judgment of $962,000. with interest and costs of ($681.58).

4. The verdict underlying the judgment should be vacated because the judgment is based upon the perjured testimony of Charles Lafferty, a plaintiff in the proceedings. Attached is copy of opinion in criminal proceeding.

5. Respondent is not entitled to delay damages under Section 611 of the Eminent Domain Code on $700,000 for machinery and equipment since the amount was awarded by jury for machinery and equipment and equipment is an item of special damage under the Eminent Domain Code of 1964, Section 601 A, and no delay damages are due on items of special damage.

6. Respondent is not entitled to delay under Section 611 of the Eminent Domain Code on moving costs of $10,000 since amount was awarded by jury as moving costs, an item of special damage under the Eminent Domain Code of 1964, Section 601 A.

7. Respondent is not entitled to delay damages under Section 611 of the Eminent Domain Code for another $500 in attorney fees or $1500. for award for search for new place for the reason specified in Paragraph 5 hereinabove.

8. Petitioner does not have sufficient unappropriated funds for fiscal year commencing July 1, 1978, and ending June 30, 1979 to pay the judgment. Said funds are necessary to keep the school system open and to pay capital bond charges.

9. The Writ of Mandamus Execution served on the Defendants had no return date and was unsigned.

WHEREFORE, Petitioner moves to Quash the Writ of Mandamus and Vacate the Judgment of $962,000 entered in this matter.

EUGENE F. BRAZIL
Attorney for Petitioners

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss

CHARLES A. HIGHSMITH being duly sworn according to law, deposes and says that he is the Assistant Secretary for The School District of Philadelphia and that the facts set forth in the foregoing Petition to Quash Writ of Mandamus Execution and Strike Judgment are true and correct to the best of his knowledge, information and belief.

s/ CHARLES A. HIGHSMITH

Sworn to and subscribed
before me this 7th day
of November, 1978.

BESSIE M. WHITNEY
Notary Public, Philadelphia Co.
My Commission Expires December 29, 1978

APPENDIX F.

Answer to Petition and Rule to Show Cause Why Writ of Mandamus Execution Should Not Be Quashed and Judgment Stricken.

Augustus R. Sigismondi
1201 Chestnut Street
Suite 200
Phila., Penna. 19107
Phone: 563-8948
Attorney I.D. 13546
Attorney for Lafferty

CHARLES J. LAFFERTY ET AL	:	COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
vs.		FEBRUARY TERM, 1970
SCHOOL DISTRICT OF PHILADELPHIA	:	NO. 942

ANSWER TO PETITION AND RULE TO SHOW CAUSE WHY WRIT OF MANDAMUS EXECUTION SHOULD NOT BE QUASHED AND JUDGMENT STRICKEN

1-2-3. Admitted.

4. Denied. Charles J. Lafferty (Lafferty) has been granted a new trial because of the many prejudicial errors committed by the prosecution at the trial. Further, the essential element of materiality is lacking in the so called false utterances by Lafferty. A Motion in Arrest of Judgment is presently pending before the Superior Court of Pennsylvania, on that, and other legal questions.

Moreover, this judgment in eminent domain has been appealed by the School District of Philadelphia (School District), through the Court of Common Pleas, the Commonwealth Court (C.D. 1448 of 1975), and the Supreme Court of Pennsylvania (Allocatur 2821). The arguments of after-discovered evidence and perjury were presented in all of the above forums, and the judgment was affirmed each time.

The School District filed a Petition, then a Supplemental Petition to Reconsider the denial of the allocatur, in the Supreme Court, and attached a copy of the docket entries of the perjury trial showing a guilty verdict by the jury. Lafferty also filed pleadings in the Supreme Court in the nature of a Petition for Leave to Answer the School District's Petition for Allocatur,** and at that time, Lafferty also notified the Supreme Court of the guilty verdict, and that post-trial motions would be filed. After being given the above information, the Supreme Court, on August 3, 1978, again refused Allocatur.

On September 13, 1978, by opinion of Anderson, J. Lafferty was granted a new trial in the perjury matter.

The Court is requested to take judicial notice of the fact that the School District prevailed on the District Attorney to bring the criminal action against Lafferty, on June 23, 1977, six days after the Supreme Court refused Allocatur upon which the judgment became final.

In addition to using criminal process, obviously to prevent the payment of, or to obtain a substantial reduction of a legitimate and final judgment arising out of the most awesome power of eminent domain, the School District is now attempting to collaterally attack the judgment by repeating the frivolous and unsustainable charge of perjury where none exists, inasmuch as a new trial has already been granted.

**Filed March 13, 1978, and attached hereto to give factual background for the case, and the law of materiality in perjury.

5. Denied. All of the machines, fixtures and equipment formed an Assembled Economic Unit with the real estate, and are compensable as part of the real estate, not as an item of special damage, as alleged. Compensation for delay in payment is applicable thereon from the date of possession, September 6, 1972.

6-7. Denied. The averments of paragraph 5 hereof are incorporated herein as if specifically set forth. Further, these items are part of a valid and final judgment, which always carries interest from the date of the entry thereof.

8. Denied. The verdict of the eminent domain jury was entered on June 25, 1974. Judgment was taken on September 22, 1975. From that date to the present, the School District has had three (3) years to include the sum of the judgment, and compensation for delay, and/or interest, and costs, in its budget of capital expenditures. Furthermore, on November 9, 1972, the Board of Viewers awarded the condemnees the sum of $1,255,400.00, with compensation for delay in payment. The School District should have budgeted that sum from 1972-1973.

It is denied that the School District does not have sufficient unappropriated funds to pay the judgment, or that it has no funds to pay the judgment; or that all of its funds are required to keep the school system open and to pay capital charges, as alleged. Funds for capital charges such as for the acquisition of property are available from the City of Philadelphia, Commonwealth of Pennsylvania, and from a consortium of banks in Philadelphia and elsewhere, which moneys are constantly flowing into the treasury of the School District and are unappropriated and available for this purpose.

When, on February 5, 1970, the School District condemned the land, buildings, plant, machines, fixtures, equipment, tools and entire manufacturing plant of Lafferty, it exappropriated the life's blood of four families and three generations of industrious people. It should not now be allowed to avoid, or delay further, the time of payment.

9. Denied. The Writ of Mandamus Execution was properly issued by the Prothonotary of the Court of Common Pleas of Philadelphia, and signed by a deputy Prothonotary, N. DiAchillo. The Writ requires no Rule or return day, and is issued as a matter of course where the judgment is final.

WHEREFORE, Lafferty requests the Court to dismiss the School District's petition, and requests relief as follows:

1. That the School Board and Treasurer of the School District be ordered to pay the judgment with compensation for delay in payment, and/or interest, with costs, within twenty (20) days.

2. In default of payment, that each and every member of the School Board and the Treasurer of the School District be attached and held in contempt of Court, pursuant to the prayer of Lafferty's Petition for Attachment, filed on October 31, 1978.

3. That the Sheriff of Philadelphia be ordered to collect the judgment with compensation for delay and/or interest and costs, by appropriating each and every sum of money coming into the School District's Treasury, until paid in full.

4. Such other relief as may be appropriate.

And they will every pray.

AUGUSTUS R. SIGISMONDI
Attorney for Lafferty

CITY OF PHILADELPHIA
COMMONWEALTH OF PENNSYLVANIA } ss

RONALD LAFFERTY, of Bethel and Keystone Roads, Chester, Pennsylvania, being duly sworn according to law, deposes and says that he is one of the condemnees in the foregoing matter, and is authorized to make this affidavit in behalf of all others, and that the facts set forth in the foregoing Answer are true and correct to the best of his knowledge, information and belief.

RONALD C. LAFFERTY

Sworn to and Subscribed
Before me this 20th day
Of November A.D. 1978.
SUSAN B. BUSH

SUSAN B. BUSH, NOTARY PUBLIC
PHILADELPHIA, PHILADELPHIA COUNTY
MY COMMISSION EXPIRES OCT. 4, 1982

APPENDIX G.

Order and Opinion of the Court of Common Pleas of Philadelphia County Dismissing Motion of the School District of Philadelphia for New Trial.

COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
TRIAL DIVISION

CHARLES LAFFERTY, et al : FEBRUARY TERM, 1970

vs. :

THE SCHOOL DISTRICT OF PHILADELPHIA : NO. 942

ORDER

AND NOW, to wit, this 11th day of September, 1975, the motion of Defendant, The School District of Philadelphia, for a new trial is dismissed.

BY THE COURT:
s/ KALISH, J.

J.

COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
TRIAL DIVISION

CHARLES LAFFERTY, et al : FEBRUARY TERM, 1970

vs. :

THE SCHOOL DISTRICT OF PHILADELPHIA : NO. 942

OPINION

By: Kalish, J.—OCT 23 1975

Charles J. Lafferty, John W. Lafferty and Ronald C. Lafferty (Lafferty) owned 1617-25 South Bambrey Street (East Side) and the Northwest corner of Bambrey and Morris Streets (West Side).

On February 5, 1970 Defendant, School District of Philadelphia (School District), filed a declaration taking both the east side and west side.

On September 6, 1972, Lafferty vacated the property, both east side and west side, leaving its machinery and equipment and moved to a new plant in Delaware County, Pennsylvania, about ten miles away.

The Plaintiff's theory at trial was that the entire plant, and more particularly west side and the machinery and equipment contained therein constituted an assembled economic unit which could not be moved so as to create a comparable economic unit and that its damages should be awarded on that basis. Furthermore, Lafferty contended that he could not move into another building suitably adapted to its business within a reasonable distance; hence, the building was unique.

School District contends that the doctrine does not apply; and the jury's verdict was against the weight of the evidence.

A verdict sheet was given to the jury with special interrogatories as follows:

(1) Could all or most the machinery in the production or the west side of this business be moved to another located without substantial or significant injury and form a comparable economic unit?

The jury replied, "No".

(2) Was the building on the west side unique because of the nature of the building and was no other building

within a reasonable distance adaptable to the functioning of the business?

The jury replied, "Yes".

The verdict sheet asked the jury to record its findings and fix the amounts next to them. The jury was given the following items and placed the amounts next to them.

Real Estate	$250,000.00
Machinery and Equipment	$700,000.00
Search for New Place	$ 1,500.00
Moving of Inventory	$ 10,000.00
Counsel Fee	$ 500.00

The plant produced fittings that were used under high pressure, high temperatures, some in connection with atomic energy plants.

The plant itself contained various types of machines, lathes and grinders, all of which were purchased originally as used machinery. They were then stripped down by Lafferty in the east building and then the base was brought to the west building and rebuilt in place. The Court's charge briefly reviewed the evidence as follows:

"You will recall his testimony how they altered the machines so that it was possible to do heavier and faster work, increase the production. You will recall how long it took to do these operations and the time spent and work hours and labor and cost involved in preparing these machines, beefing up these machines. Lafferty said he did for every single machine on the west side the same type of alteration, although you will recall that he testified that they kept the records whatsoever of the cost involved. He expressed an opinion that these machines could not be moved without significant injury, and you will recall the reasons he gave. Primarily he said that to remove these machines would mean to rebuild them at its

new location, each and every machine. You will recall, and I don't want to go through all the details, but there was testimony concerning what they did on the inside of the machines.

Mr. Domenick Bianco, who is a millwright, whose job it was to lay out, place and align the machines. You will recall that he expressed an opinion that 45 to 50 percent, he said, of those machines on the west side could not be moved without significant injury. He said they would be damaged permanently, and that those machines that could be moved would not form a comparable economic unit. You will recall his reasoning, primarily to do with the rebuilding of the machines in place and that the base, he said, supports everything and that the minute the base is dislodged you have a lot of problems.

Then Mr. Canavan testified that he was an appraiser of machinery and equipment. He said he examined the machinery on April 9, 1970, and about six times again in 1970. Mr. Canavan, as with all other experts, and you remember, you saw so many of the photographs of all kinds here, the machinery that was down there and the certain explanations as given of the machinery and equipment, and the appraising of the fair market value of the machinery and equipment in place. Canavan said he considered what they could be bought for on the second-hand market and then considered what was done to them and then what he learned, he considered what was done to them which he learned, he said, from the owners of the property. You will recall he gave a fair market value in place, he said, of the machinery and equipment of $1,400.00. In his testimony, it was extensive testimony about each machine and its tooling such as chuckers, chuck jaws, and indexing machines, and so forth, and that he concluded that these machines could not be moved, and that at least

45 to 50 percent, he said, on the west side could not be moved, and you will recall he said that all of this work was done, all of the work was done on these machines and that he arrived at a conclusion that 45 to 50 percent could not be moved.

You will recall the machines that were there were bought, remember the testimony, on a second-hand market from $1,200.00 to $3,000.00 and that he gave it a value in place, fair market value in place of these machines on the west side ranging anywhere from $14,000.00 to $30,000.00 or $40,000.00 depending, as he said, on the amount of work that was put into the machine and the kind of machine and the alterations that were made to the particular machine.

Now, the School District presented Mr. Samuel Solow, also an expert machinery appraiser and qualified machinist. He testified that he visited and inspected the plant in November of 1968, May of 1968, and a number of times in 1970 and 1972, and took quite a number of photographs, many of which you saw as flashed on the wall of the machinery and equipment down there. Mr. Solow expressed an opinion based on data which he secured from movers and riggers that it would cost $39,575.00 to move the machinery and equipment to a comparable unit, those items that could not be moved because economically it was unfeasible to do it, would cost at fair market value in place, would cost about $12,000.00, but he also gave an expressed opinion that all of the machinery and equipment, the fair market value of it in place was, he said, $142,000.00. I have already discussed that with you as compared to the $1,400,000.00 as set by Mr. Canavan. He expressed an opinion, that is Mr. Solow, that all or most of the machinery and equipment could be moved to another location without substantial injury to form an economic unit and he said, if you will recall, even though

he did not know that the machinery was rebuilt in any way, he said he had no knowledge of it, and he said that this would not make a difference in his opinion and that the valuation was that he gave to it and also gave an opinion that these machines were not of a high tolerance.

There was another witness by the name of Mr. Charles Young, who was a rigger and machine erector contractor and was president of the George Young Company, president for over 30 or 40 years, something like that. He testified that all the machines could be disconnected and removed and reinstalled without substantial injury. He said he saw no reason why they couldn't be moved. He said he has removed machinery like this before and he didn't think it was very delicate machinery. He further stated it would make no difference, nor was it important that the machines were modified in any way.

Then you heard the testimony of Mr. Joseph Behmer, machinist and tool maker who also taught tool machine practice. He testified that there was no problem in moving these machines."

Under proper instructions, the Court left to the jury the issue of the assembled economic unit doctrine and the uniqueness of the building.

The evidence must be viewed in the light most favorable to the verdict winner. There was ample evidence in the record to support the jury's finding on this issue and the issue of the uniqueness of the building. (See Charge—page 31 of notes of testimony).

Counsel for Defendant contends that the Court should not have permitted Plaintiff's expert and also Mr. Lafferty, who himself worked in rebuilding the machines to itemize the costs of such rebuilding. The evidence does not show that Plaintiff used these items as elements of damage but simply as a guide to determine the fair market value of the

machinery in place. An expert may state any and all facts which he considered in arriving at his opinion. Plaintiff contended that these machines were unique and unusual. It is entirely proper to consider the costs in the overall unit valuation of the machines. *See, Hoffman vs. Commonwealth,* 422 Pa. 144 (1966) and *Pulakos vs. Redevelopment Authority,* 330 Atlantic 2, 869. The jury followed the Court's instructions on how to deal with the machinery and equipment problem and rendered a single verdict for all the machinery and equipment taken. While technically the machinery and equipment, under the jury's findings, were part of the real estate and probably should have been found as such, our Courts have relaxed the unit rule in this regard. *See, Pulakos vs. Redevelopment Authority, supra.*

Much of School District's contention does not concern the issue of the weight of the evidence as it does the credibility of the experts, and that was left to the jury under proper instructions. Such matters as to where and how the experts received their information on which their opinions were based and the lack of records kept by Lafferty, all goes to the credibility of the witnesses. For example, in its brief, School District discusses the invoices supplied by Lafferty and concludes that, "This is some indication of the truthfulness and reliability of the testimony of Mr. Canavan". (Page 8 of brief). Likewise, as to whether the machines which Lafferty testified to were actually bored or not or could be moved without significant injury is for the jury. The jury may or may not believe the testimony.

The School District complains that the Court refused to allow into evidence what Lafferty paid for the property five years before. The evidence indicated that the property was one of several; that its structure had been changed by modifications; that a fire had destroyed part. Under such circumstances the Court in its discretion felt it was not "comparable".

Lafferty testified that he kept no records as to costs of repairs of the machines because he never thought he would have to prove any expenditures. Defendant's counsel sought to pursue this area and was getting into tax questions involving accounting. Plaintiff said his accountant handled these matters. At this point, the Court felt that Defendant was getting off the issue and feels it properly stopped further questioning.

The Defendant seeks a new trial on the basis of "after discovered evidence". The "after discovered evidence" appears to be some evidence that at least some of the machines were not altered as Lafferty had testified. It is too late for this. Defendant had ample time before trial to discover this, if indeed, it was discovered. The most that can be said of this evidence is that it goes to credibility, rather than the merits of the case.

BY THE COURT:
s/ KALISH, J.

J.

APPENDIX H.

Opinion and Order of the Commonwealth Court of Pennsylvania Affirming Dismissal of Motion of The School District of Philadelphia for New Trial.

CHARLES J. LAFFERTY, JOHN W. LAFFERTY, RONALD C. LAFFERTY AND MARY LAFFERTY	:	IN THE COMMONWEALTH COURT OF PENNSYLVANIA
v.	:	
SCHOOL DISTRICT OF PHILADELPHIA, *Appellant*	:	No. 1448 Commonwealth Docket 1975

BEFORE: HONORABLE JAMES S. BOWMAN, President Judge
HONORABLE JAMES C. CRUMLISH, JR., Judge
HONORABLE ROY WILKINSON, JR., Judge
HONORABLE GLENN E. MENCER, Judge
HONORABLE THEODORE O. ROGERS, Judge
HONORABLE GENEVIEVE BLATT, Judge

ARGUED: October 5, 1976

OPINION

OPINION BY JUDGE WILKINSON FILED November 16, 1976

Appellant appeals the refusal of the Philadelphia County Court of Common Pleas to grant a new trial. We affirm.

Appellees manufactured precision forged-steel threaded fittings in two buildings on the opposite sides of the same city block.[1] Appellant filed a declaration of taking on

1. The actual manufacturing was conducted in the building on the west side of the block. The building on the east side was used for the production, service and repair of parts for appellees' machines.

February 5, 1970, and accepted possession on September 6, 1972. Appellees left all their machinery, equipment and tools in place and moved only their new materials and inventory to a new plant they built ten miles away. At trial following appellant's appeal from a board of view award, appellees contended that their former facilities, especially the building in which the actual manufacturing took place, constituted an assembled economic unit which could not be moved. Appellees also contended that the condemned building was unique. After hearing conflicting testimony, the jury answered the trial judges submission of special findings that appellees' machinery could not be moved to form a comparable economic unit elsewhere without substantial or significant injury and that the building was unique. Appellees were awarded $962,000.00. Appellant's motion for a new trial and the denial thereof followed.

Appellant argues initially that the verdict was against the weight of the evidence. We disagree. While there were certainly conflicts in the expert testimony, especially as to whether the machinery could be moved without damage, the record shows ample evidence to support the jury's findings. As the court below noted: "Much of [the] School District's contention does not concern the issue of the weight of the evidence as it does the credibility of the experts . . . ."

Appellant alleges error in the court's submission of the uniqueness issue to the jury and in its instruction that all values are to be determined as of the date of taking, including those of personal property left as part of the alleged economic unit. However, appellant took no specific exception to either point of the charge. Its claims, therefore, cannot be heard on appeal. *Dilliplaine v. Lehigh Valley Trust Co.*, 457 Pa. 255, 322 A.2d 114 (1974).

Appellant contends further that the court erred in permitting evidence as to the value of stationery left on

the premises.[2] Again, we cannot agree. Section 601A (b) of the Eminent Domain Code[3] permits recovery of actual direct losses with reference to personal property which cannot be moved without substantially destroying or diminishing its utility in the relocated business.[4] The record shows that stationery came within this provision.

Nor can we agree with appellant's claim that the court erroneously permitted appellees' expert to add costs of rebuilding in determining the market value of machinery within the condemned premises. An expert may consider reproduction costs in his determination of value. *Hoffman v. Commonwealth*, 422 Pa. 144, 221 A. 2d 315 (1966). The record does not show that the expert used reproduction costs in any other way. Nor does the record support the claim that appellees' expert defined market value in terms of value to the appellees.

Appellant next alleges error in the court's refusal to admit the purchase price of the condemned property. Appellant notes that such purchase occurred slightly more than five years before condemnation and cites cases in which sales more than five years before were admitted. Yet, as we have recently stated:

> "It would be an oversimplification, however, to say that because we are here dealing with a five year period, which falls within the bounds of other cases where such a period has been held to be not too remote, that we can ipso facto conclude that the lower court erred when it excluded cross-examination of purchase price of the Hammaker tract. The court below is vested with broad discretion in this

2. The stationery was valued at $7,500.

3. Act of June 22, 1964, Special Sess., P.L. 84, *as amended*, 26 P.S. §1-101 et seq.

4. Since the date on which possession was transferred was September 6, 1972, appellees come within this provision. *See* 26 P.S. §1-606A.

> area. . . ." *Klick v. Department of Transportation*, 20 Pa. Commonwealth Ct. 627, 632, 342 A.2d 794, 797 (1975).

Here the court observed that the structure had been partially destroyed by fire, otherwise changed and therefore not "comparable" to its condition five years before. While another judge might have ruled otherwise, we cannot hold that this judge abused his discretion in so ruling.

Appellant further alleges error in the court's refusal to allow cross examination of appellee as to why no records were kept concerning repairs to his machines. Appellee testified that he merely followed the advice of his accountant on such matters, and the court felt that further questioning in the area was "getting off the issue." That action was also within the discretion of the trial judge.

Finally, appellant requests a new trial on the ground of after-discovered evidence, claiming that on the date of taking it had no knowledge that the machines had not been altered as appellees alleged. As the court below ruled: "It is too late for this. Defendant had ample time before trial to discover this, if indeed, it was discovered. The most that can be said of this evidence is that it goes to credibility, rather than the merits of the case."

The record shows no other grounds for appeal.

Accordingly, we will issue the following

ORDER

NOW, November 16, 1976, the order of the Philadelphia County Court of Common Pleas, dated October 23, 1975, in No. 942, February Term, denying the motion of the School District of Philadelphia for a new trial, is hereby affirmed and the appeal dismissed.

s/ ROY WILKINSON, JR.

Roy Wilkinson, Jr., Judge

CHARLES J. LAFFERTY, JOHN W. LAFFERTY, RONALD C. LAFFERTY AND MARY LAFFERTY	:	IN THE COMMONWEALTH COURT OF PENNSYLVANIA
v.	:	
SCHOOL DISTRICT OF PHILADELPHIA, Appellant	:	No. 1448 Commonwealth Docket 1975

ORDER

NOW, November 16, 1976, the order of the Philadelphia County Court of Common Pleas, dated October 23, 1975, in No. 942, February Term, denying the motion of the School District of Philadelphia for a new trial, is hereby affirmed and the appeal dismissed.

s/ ROY WILKINSON, JR.
Roy Wilkinson, Jr., Judge

APPENDIX I.

Petition for Allowance of Appeal to Supreme Court of Pennsylvania of Commonwealth Court's Affirmance of Dismissal of Motion of the School District of Philadelphia for New Trial.

IN THE SUPREME COURT OF PENNSYLVANIA

THE SCHOOL DISTRICT OF PHILADELPHIA	:	
vs.	:	
CHARLES LAFFERTY, et al	:	No. 2821 ALLOCATUR

PETITION FOR ALLOWANCE OF APPEAL

Petitioner, The School District of Philadelphia through its attorney Eugene F. Brazil files a Petition For Allowance of Appeal as follows:

1. The above captioned matter involved a condemnation of property by The School District of Philadelphia. It was tried before the Honorable Jacob Kalish and a jury. The court term and number of the case in the lower court was Court of Common Pleas of Philadelphia County February Term 1970 No. 942. The opinion of the lower court refusing defendants motion for a new trial is attached hereto as Exhibit A. On appeal the Commonwealth Court affirmed the action of the lower court. The case is lodged in the records of the Commonwealth Court in Commonwealth Court Docket 1975 No. 1448.

2. The order of the Commonwealth Court read as follows:

> "NOW November 16, 1976, the order of the Philadelphia County Court of Common Pleas dated October 23, 1975 in No. 942, February Term, deny-

ing the motion of the School District of Philadelphia for a new trial, is hereby affirmed and the appeal dismissed."

3. The question presented for review is as follows: Should a new trial be granted on the basis of after-discovered evidence showing the plaintiff testified falsely, where false testimony is given by one of the plaintiffs, the false testimony is the very basis of the case, the false evidence is made known to defendant for the first time at trial, the after discovered evidence that plaintiff testified falsely is from an independent third party and is mathematically precise?

4. This case involves a condemnation for public school purposes of plaintiff's machine shop. A declaration of taking was filed on February 5, 1970. The plaintiffs vacated the property on September 6, 1972 leaving all machinery and equipment, and personal property except inventory in the buildings. Plaintiff's inventory was moved to a newly constructed building in Delaware County in September, 1972. The case was tried before a judge and jury. The jury rendered a verdict as follows:

Real Estate	250,000
Machinery and Equipment	700,000
Search For a New Place	1,500
Moving Inventory	10,000
Counsel Fee	500

The plaintiff testified that he changed the machines from the original manufactured machine by replacing old fashion sleeve bearings with tapered rollered bearings and increased the size of the bearings, for example, from two inches to five inches. He testified that this required enlarging the holes in the base of the machine thus weakening the base of the machine. According to plaintiff, this weakening of the base prevented moving the machine without substantial damage to the machine. Plaintiff used

an 11 inch Goss and DeLeeuw machine as the model of the alterations he allegedly made to the machines. In discussing that machine at R122a he said:

"That sleeve type spindle cannot be used for high speeds and we replace it with a taper roller bearing."

"Q. You went from two inches to five inches actually." Yes Right"

"Q. Where did you do it? Where did you change the the size of the hole?

In what area would you do it?

A. Right in the base of the machine on the westside of the street.

Q. How many of these holes did you change?

A. All five spindles."

At R131a plaintiff indicated in response to a question from Counsel as follow:

"Q. I take it to the rest of the machinery in the production department, did you do this kind of thing for each and every one of those machines?

"A. Yes, each and every one."

Mr. Bianco, a millright, testified as an expert witness for plaintiff on whether the machines could be moved without substantial damage. At R243 he discussed the effect of replacing the sleeve bearings with the roller bearings as follows:

"Q. What happens to the base of the machine?

"A. It weakens the base, because you are taking a piece of cheese and drilling through it, like a switzer cheese. It weakens it. This is why it is doubly harmful to move them. . . ."

Subsequent to the trial The School District of Philadelphia learned from dismantling of the 11 inch Goss and DeLeeuw machines that the bearing size and bearing type was not changed as testified to by plaintiff but rather the bearing size and type was the same size and type as in the original manufactured machine. Warner and Swasey Co. examined three of its machines in plaintiff's plant and indicated the spindle bearings in the machines conformed to prints of the original drawings for the machines.

Not a single machine was found wherein the bearing size and type had been changed from the original drawings. Plaintiff had testified falsely with regard to the *crucial fact* of his case.

5. The lower court and the Commonwealth Court gloss over the fraud that has been perpetrated by plaintiff. They say the School District of Philadelphia should have determined prior to trial that the bearing sizes on the machines had not been changed. The School District had no reason to check the bearing sizes of the machines prior to trial, since the plaintiff did not allege any change in bearing size prior to trial.

Assuming arguendo that the School District knew prior to trial that plaintiff would testify he changed the bearing size and type bearing on the machines, does that justify plaintiff's false testimony?

The essence of this matter is that plaintiff testified falsely in order to prove the machines could not be moved. This false testimony has a domino effect since it changes the opinion of his expert witness as to the movability of the machines. It also affects the testimony of his valuation expert as to the cost of rebuilding the machines, since that witness based his valuation on what plaintiff said he did to the machines. Neither of these witnesses could say from personal knowledge that the bearings were changed.

The opinions of the lower court and the Commonwealth are completely oblivious to the law of this Commonwealth regarding this situation as that law is concisely set forth in McCabe v. Pennsylvania Railroad Company, 311 Pa. 229 (1933) at page 233:

"In the face of this admission of brazen wrongdoing by plaintiff, the trial court refused to grant a new trial. This was an abuse of discretion. It is true beyond doubt or question that plaintiff perpetrated a bold fraud upon the court and jury or upon the insurance company. It is equally true that if defendant had been in possession of this evidence at the trial, it would have been able to contradict plaintiff on matters most material to his case, with the result that the jury would have been justified in disregarding his whole testimony. 'Falsus in uno, falsus in omnibus.' The statements which he warranted as true in his application were wholly false, or he perjured himself deliberately and for profit at the trial. To deny defendant the right to a new trial under these circumstances would be a travesty upon justice. We realize it is unusual to grant a new trial on the ground of after-discovered evidence impeaching the testimony of a witness, but where, as here, that witness is the plaintiff himself, the testimony contradicted is the very basis of his case, and he admits having made the statements that contradict his testimony at the trial, a new trial should be granted so that a jury may pass upon plaintiff's credibility in the light of this evidence."

It is respectfully submitted that the issue in this case strikes at the core of the standard of truthfulness expected of a witness under oath. Will he profit by his lies or will the Court act upon the fraud perpetrated upon itself and the jury?

Your petitioner believes that an appeal should be allowed.

Respectfully submitted

Eugene F. Brazil
Attorney for The School District
of Philadelphia

APPENDIX J.

Notice of Order of Supreme Court of Pennsylvania Denying Petition for Allowance of Appeal.

SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

June 20, 1977

Eugene F. Brazil, Esq.,
2044 Chestnut Street
Phila., Pa. 19103

In re: The School District of Philadelphia, Petitioner, v. Charles J. Lafferty, et al. No. 2821 Allocatur Docket

Dear Mr. Brazil:

This is to advise you that the Supreme Court has entered the following Order on the Petition for Allowance of Appeal in the above-captioned matter:

"June 17, 1977

Denied

Per Curiam".

Very truly yours,
Sally Mrvos
Prothonotary

By

Laura E. Litchard
Deputy Prothonotary

LEL:mb
CC: Augustus Sigismondi, Esq.

APPENDIX K.

Petition to Supreme Court of Pennsylvania for Reconsideration of Allowance of Appeal.

IN THE
SUPREME COURT OF PENNSYLVANIA

THE SCHOOL DISTRICT OF PHILADELPHIA, *Petitioner* :

vs. :

CHARLES LAFFERTY, *et al.* :
Respondent: NO. 2821 ALLOCATUR

PETITION FOR RECONSIDERATION OF ALLOWANCE OF APPEAL

Petitioner, The School District of Philadelphia, through its attorney, Eugene F. Brazil, files this Petition for Reconsideration of Allowance of Appeal as follows:

1. The Supreme Court of Pennsylvania denied the Petition for Allowance of Appeal in this matter on June 17, 1977.

2. On December 2, 1976, the Board of Education of the School District of Philadelphia, through its president, Arthur W. Thomas, wrote to the District Attorney of Philadelphia asking him to determine whether criminal perjury was committed in this case. A copy of this letter is attached hereto as Exhibit "A".

3. On June 27, 1977, the District Attorney's Office informed the Legal Department of the School District that the evidence presented was sufficient to warrant charges of perjury against Charles Lafferty and that an arrest was imminent.

4. If the Court refuses to allow an appeal in this case and Lafferty is convicted of perjury, the School District of Philadelphia will be required to pay in excess of $1,000,000 on a tainted verdict. Such a result will reflect on the entire system of justice in this Commonwealth.

Respectfully submitted,

EUGENE F. BRAZIL
General Counsel
School District of Philadelphia
21st Street and The Parkway
Philadelphia, Pennsylvania 19103
(215) 299-7676

December 2, 1976

F. Emmett Fitzpatrick, Esq.
District Attorney
Philadelphia County
2300 Centre Square West
Philadelphia, Pa. 19102

Re: Lafferty v. The School District of Philadelphia
Court of Common Pleas
Philadelphia County
February Term 1970 No. 942

Dear Mr. Fitzpatrick:

The above captioned case involved a condemnation by the School District of Philadelphia of property at the N.W. Corner Bambrey and Morris Streets in the City of Philadelphia. The property was owned by Charles J. Lafferty, John W. Lafferty, Ronald Lafferty and Mary Lafferty. They operated a business at this location known as the Penn Machine Company, a partnership.

The matter was tried before Honorable Jacob Kalish and a jury commencing June 17, 1974. The jury awarded plaintiff $700,000 for the value in place of machinery.

The award was based primarily on the testimony of Charles Lafferty, Jr. that the machines were rebuilt in place in such a way that the base of the machine was weakened. Specifically, he stated that bearings in the original manufactured machine (bronze sleeve bearings) were replaced with tapered roller bearings and bearing size was increased from two inches to five inches. In order to accommodate the larger bearings, he stated the base of the machine had to be rebored creating much larger holes thereby weakening the base. The net result of this was,

EXHIBIT "A"

according to his testimony, the machines would be seriously damaged if moved.

After the trial, the School District had the Franklin Institute tear down the machines described by Mr. Lafferty to determine:

a. Was the bearing size increased from the size in the original manufactured machine.
b. Was the type of bearing changed from the type in the original manufactured machine.

The Franklin Institute checked the bearings in the machines and determined that the bearing sizes and type had not been changed from the original plans.

In addition, the School District had three Warner and Swasey machines checked by Warner and Swasey Company to determine whether the bearings had been changed from the original drawings. They indicated the machines had the same spindle bearings as were in the original manufactured machines.

The Board of Education has directed me to forward this information to you and to cooperate with you to determine whether criminal perjury has been committed in this case. Mr. Eugene F. Brazil is the staff person assigned to work as liason with you.

Sincerely yours,

Arthur W. Thomas

AWT:bh

EXHIBIT "A"

APPENDIX L.

Supplemental Petition for Consideration of Allowance of Appeal.

IN THE
SUPREME COURT OF PENNSYLVANIA

THE SCHOOL DISTRICT :
OF PHILADELPHIA :
vs. :
CHARLES LAFFERTY, et al. : NO. 2821 ALLOCATUR

SUPPLEMENTAL PETITION FOR RECONSIDERATION OF ALLOWANCE OF APPEAL

Petitioner, The School District of Philadelphia through its attorney, Eugene F. Brazil, files a Supplemental Petition for Allowance of Appeal as follows:

1. The previous Petition for Reconsideration for Allowance of Appeal indicated that Charles Lafferty was indicted for perjury and his arrest was eminent. The attached record indicates that on March 6, 1978 Charles Lafferty was found guilty by verdict of the Jury on the charge of perjury. Under the circumstances, it would appear to be appropriate to remand this matter to the Trial Court directing that a new trial be granted.

Respectfully submitted,

Eugene F. Brazil
Attorney for The School District
of Philadelphia

APPENDIX M.

Order of Supreme Court of Pennsylvania Denying Petition for Reconsideration of Denial of Allowance of Appeal.

SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

August 4, 1978

Eugene F. Brazil, Esquire
2044 Chestnut Street
Philadelphia, PA 19103

In re: The School District of Philadelphia, Petitioner v. Charles J. Lafferty et al. No. 2821 Allocatur Docket

Dear Mr. Brazil:

Please be advised that the Court has entered the following Order on the Petition for Reconsideration of Denial of Petition for Allowance of Appeal in the above captioned matter:

"August 3, 1978

Denied

Per Curiam"

Very truly yours,
Sally Mrvos
Prothonotary

By

Catherine E. Lyden
Deputy Prothonotary

CEL:mb
CC: Augustus Sigismondi, Esq.

APPENDIX N.

Excepts from Transcript of Trial of Charles Lafferty, et al v. The School District of Philadelphia, in the Court of Common Pleas of Philadelphia County, February Term, 1970, No. 942, Held on June 17, 1974.

* * *

parts. If we can buy cheaper, we buy it, if it is available.

Q. What is the purpose of rebuilding the machine?

A. To have it the way we want it.

Q. What do you mean by that?

A. As an example, we have a competitor that went to Germany and bought a machine for $350,000.00 to make a two inch pipe fitting in one minute a piece.

We bought two eleven inch Gosses off him, he got rid of them, they were too slow, he couldn't make a pipe fitting in one minute with the machine, so they got rid of it and we bought it from them.

By beefing up the machine, by using heavier gears and shafts, heavier chuckers, we are now doing two inch pipe fittings in forty-seven seconds and he went out and spent $350,000.00 for a machine to do one of them in one minute.

Q. You talked about beefing up a machine?

A. Yes.

Q. When you say that, were you talking about weight adding, adding weight to the machine?

A. In some instances, yes, we do, but in most cases, we take weight away from the machine.

Q. What do you add?
A. Well, we add oversized bearings primarily. A lot of these old machines have a sleeve type bearing and we put in ball bearings or taper rolling bearings to speed them up, to make them go faster, use stronger type metal, push a heavier steel it. We beef them up generally all over so that they will do heavier work faster.
Q. What is the purpose of building the machine in place on top of the base on the westside of the street?
A. Because we know what we have. We are building a machine that we intend to leave there, to give us years and years of trouble-free service, with minimum amount of maintenance, minor adjustments and whatnot. We build them as heavy as possible to run without giving us trouble.
Q. Did you have in mind when you built them the fact that someday they have to be moved?
A. No, we didn't. That's the furtherest thing from our mind. We thought we would be there for the rest of our lives and built these machines there to give us the production that we needed.

We had a very good business there and intended to stay there and continue manufacturing our product.

Q. What, if anything, would happen to these machines if

* * *

Q. Now, were there other machines on the eastside in similar circumstances?
A. Yes, there were.
Q. How many would you say you had in that condition?
A. Maybe half a dozen, I would say.
Q. We saw some motors in actual machine shops on the westside lying on the floor near or underneath a bench. What were they doing there? What were they being used for?

A. Spare parts, two phase motors. Two phase power is not readily available all over the City and a two phase motor is a rarity, and occasionally if I go to a sale or something or in a machinery dealer's place around Philadelphia, I always look for a two phase motor so I can have a spare, just in case I do have a breakdown, I am not tied up for any length of time.
Q. What kind of motor did the Pottstown have?
A. All three phase motors.
Q. What were you about to do with it with reference to the electrical power?
A. Rewind the motor to accommodate two phase power.
Q. Is that part of the rebuilding operation?
A. Yes, it is.
Q. Now, I would like to go into the question of rebuilding a machine.

Can you pick a machine for us and tell us exactly what it cost to rebuild, to the best of your recollection?

A. Well, take one of them, the eleven inch Goss and DeLeeuw, that is a five spindle chucking machine where we machine our forgings.

We do up to four inch pipe size and elbows, tees, cross, 45° elbow, that sort of thing. Forging is the shape of the fitting that we do on the eleven inch Goss.

The reason I picked that one, this is one of the receipts that I could find from what we had paid for it.

Q. Tell us first—glad you brought that up,—where did you buy the machine, and how much did you pay for it?

A. We bought the machine in Tennessee. I paid $3,750.00 for the machine.
Q. Where in Tennessee did you buy it?
A. From a faucet manufacturer. I bought it through a dealer in Connecticut. It was in Mississippi where it came out of. A brass faucet manufacturer had it. By the way, that only had fifty cycle power. It didn't have sixty cycle power. That eliminated all the electric wiring in there right off.
Q. You had to change all the electrical motoring?
A. Yes, right off.
Q. You purchased it from down in Mississippi from a dealer in Connecticut?
A. Yes.
Q. How did you find out about this machine?
A. By making contact with this dealer in Connecticut. He kind of tries to specialize in this machine, this particular machine and we periodically called him to ask him if he had any of these machines. They are kind of hard to find and we are constantly looking, as you can see the correspondence that I brought you. We have gone as far as England to look for this type of equipment.
Q. When you found out the machine was in Mississippi, what did you do then?
A. We bought it sight unseen. Made a couple of phone calls down there to the fellow that had it. We decided rather than to go to the expense of a trip down there, we were too busy at the time. We decided to buy it sight unseen.
Q. How did you get it to your plant?
A. Well, they had a rigger loaded down at that end and a trucking company brought it. They hired Charles Young the rigger from over on 20th Street to come over and unload it for us.
Q. What did it cost you to bring that machine in to your plant?

A. Well, with the rigging at both ends and the freight, I would say that was an additional $2,000.00 or there-abouts.
Q. Into what part of the plant did that come into?
A. The eastside of the street.
Q. What did you do with it when you received it there?
A. Tore it completely down, stripped it right down, took out all the wiring and the electrical motors. Tore down all of the tooling on it.
Q. What was on it that you had stripped it completely down?
A. Well, took off the head, the back side, stripped it down to the bare casting, the base.
Q. What kind of men do you use in order to do that type work?
A. Our best men. The machinists that we have, they are the same fellows to rebuild it, the same fellows that tear it down.
Q. What do you pay these gentlemen per hour?
A. These particular fellows run around $9.00 an hour.
Q. How many are assigned to do this work on the machinery, usually?
A. We always like to put two on a machine at a time.
Q. Can you estimate for us what it cost to tear that down to the base as you described it?
A. Tearing it down and inspecting it, alot goes in with tearing it down. You must inspect it, check the whole thing out. As they are tearing it down, they are checking it, piece by piece, inch by inch. That can take two or three weeks, just that end of it.
Q. What do you think it cost you for that type operation?
A. Do you mean in dollars and cents?
Q. Yes.

A. Can I check a couple notes here? I find it is hard to remember all this stuff. To disassemble and inspect it, there were two weeks, with two men, for a total of a hundred and sixty hours, at $9.00 an hour, amounting to $1,440.00. That is to disassemble, clean it and inspect it.

Q. What is done after that?

A. After that, the frame itself, if it is all right, if it is usable where it can be rebuilt to do what we want it to do, we then take it over to the westside of the street and then level it and align the base only.

We then make it as secure as possible to the floor. From there, we start to rebuild it.

Q. I am curious to know why you tear it down on the eastside and take it down to the base, and then take it over, bring it over to the westside and set it on a floor, level it, line it up where it is going to be rebuilt.

Why do you go through that particular process?

A. All the parts that we are going to make for it is going to be made on the eastside. That is why our machine shop is on the eastside. That is where we machine all the parts for these machines. That is where we store everything as far as the storage is concerned.

Q. Why do you take the base from the eastside over to the westside and then start building on the westside?

A. Well, after it is rebuilt, you don't want to move it. You build it right in place. You build it to stay there, not to be moved.

Q. Does that operation secure the fact that it will operate properly without having to be moved again?

A. Yes, that's right.

Q. Okay. Now, what is the next process down after you disassemble the machine, take it over to the other side, what happens at that time?

A. Align and then level the frame, square it up and secure it as I said. Then, if we are going to put new bearings on the particular machine, which we did, the housing which is a hub that is cast right into the casting that was originally made to accommodate a solid sleeve type spindle.

That sleeve type spindle cannot be used for high speeds and we replace it with a taper roller bearing.

Q. What size roller bearing would that be as compared with the original?

A. Two inch diameter of the original sleeve bearing. We went in to three inches on the ID, and five and a half inches on the OD on the roller bearing.

Q. You went from two inches to five inches, actually?

A. Yes, right.

Q. Where did you do it? Where did you change the size of the hole? In what area would you do it?

A. Right in the base of the machine on the westside of the street.

Q. How many of these holes did you change?

A. All five spindles.

Q. Five holes?

A. Yes, if it is a five spindle machine.

Q. What does that do to the base of the machine?

A. Weaken the casting, but strengthen the spindle that you are doing for this heavier cutting, making it a faster cutting by beefing up the bearings.

Q. But it does weaken the base?

A. Yes, it does

Q. What do you do beside that?

A. Well, on this particular machine, we mounted a portable milling table on the back end of it, back at the indexing end, milled it out so the whole slide

moves back further, and put a heavier forging in chucker and a longer drill in the turret portion for drilling bigger fittings.

Q. Are you saying that you took more metal off the base?

A. Yes. We machined quite a bit out of the back end to allow the whole slide to move back further.

Q. What does that do to the base?

A. That also weakened it.

Q. What does it cost to do the work that you already indicated to the base of the machine? Did you do anything else to the base—let me ask you that first?

A. That is all. We bore all the hubs and machined the back out—that is the extent of the work to the base of it.

Q. Now, could you give us an idea what it cost to do that?

A. On that machine alone? Five weeks labor, for two men, total of three hundred and fifty hours at $9.00 an hour, comes to $3,150.000.

Q. I will be quite candid, Mr. Lafferty, and I want to ask you this question which may be a leading question, but why did you spend so much money, so much time on the base of a machine?

A. Well, we are going to manufacture a high pressure steel pipe fitting. We want it to make thousands and thousands of pieces of fitting. We want each piece to be identically correct. It is a complete repetitious operation, once it is set up and running, and it has to be duplicated, time and time again and we wanted it to be right, trouble free, so that we had to go to this expense to do it this way, to make it a good quality, salable product.

Q. Is it the base that is the most important portion of the machine?

A. Yes. That is why it is called the base—the base is what you start with.

Q. Tolerance wise, how is the base, how does the base compare to the rest of the machine? These holes you drill in it and so forth?

A. Well, the bearings are very accurate as far as spacing goes. You have opposing ends of a machine that indexes and you must have it right on center every time it indexes the cycle to line up with the other end.

Q. What is done after you take care of the base and do the base work that you already described?

A. Well, we start to assemble it. Prior to assembling it, if we need a new shaft or new gears that have to be replaced, the various shoulder bolts or whatnot, we make them prior to assembling. We make a drawing and sketch and back on the eastside of the street, we start making any parts that we need. If we buy it from the manufacturer, we buy them. If the delivery is too long, we can't afford to wait two or three months for a delivery of a part from a manufacturer, in which event we make it ourselves. We make all these parts before we start assembling.

Q. Which way is it more expensive, to buy the part from the manufacturer or make it yourself?

A. It varies. In some instances, it is cheaper to buy it then to make it. Other instances, it is cheaper to make it then it is to buy it.

Q. Are all parts available to you if you want to buy them?

A. No, they are not.

Q. So that in certain instances you must manufacture them?

A. Yes, have to make it or have someone make it for you.

Q. You manufacture and assemble the parts and put them together; is that correct?
A. Yes.
Q. How long a period of time does that take?
A. In this particular instance, to make parts and reassemble the machine, to rebuild the pumps and to rewire it, mount the new motor on it, heavier motor, and put in a new drive on it—everything that I have totalled six month labor for two men, at two thousand and eighty hours, $9.00 an hour, gross figure of $18,720.000.
Q. What about the parts for the machine?
A. Any parts in this machine—this particular machine, for the material that we used to make the shaft, we used ordinary metal, lead screws, things like that, plus material and parts, used stock that we could order, I have down here $2,000.00, and that is a conservative figure as to the metal that we needed.
Q. What kind of materials do you use in making these parts?
A. Various types. It depends on what part you are making.
Q. Well, suppose you are making a bearing?
A. If you are making a bearing, you use a high grade carbon steel so it can be hardened after it is made, but before it is ground you have it hardened.
Q. Suppose you are making a shaft?
A. You make it out of a high pensile steel, usually chrome moly steel.
Q. Suppose you make a spindle?
A. Same thing, high pensile steel.
Q. Do you use any other kind of steel?
A. Lot of stainless steel.
Q. Now, in your description, we now have the machine built. You have it together, correct?
A. Yes.

Q. What else goes on the machine, if anything?
A. You have to build a chuck for holding the fitting.
Q. What is a chuck? Would you explain that?
A. A chuck is a mechanical mechanism with two opposing sides. We use all two-jaw chucks. We have a form fitting shape of the fitting that we are to fit on and hold it true center, right and left hand chuck screw on there and when you turn it one way, both jaws move open to accommodate the fitting, turn it into the opposite direction to tighten both jaws and it clamps it dead center.
Q. So that the chuck is a holding instrument; is that correct?
A. Holding device, yes.
Q. You call that a tool?
A. Yes, that is tooling.
Q. How many of these chucks do you have on a specific machine?
A. Well, on this particular machine, there is—there are five chucks.
Q. Why would you have five chucks?
A. Because it holds five pieces at one time.
Q. You make the exact same item on this machine all the time?
A. No. We can change it over for various items.
Q. When you change it over, do you need different chucks?
A. No. We can use the same chucks. Just change the jaws to accommodate the different size fittings, the different shape fittings.
Q. Now, are these jaws also known as tooling?
A. Well, tooling for the machine, yes.
Q. Is there any other kind of tooling that goes into this machine?
A. Drills and reamers and taps, that is what you use to machine the fitting.
Q. And these are all considered tooling?

A. Yes.
Q. You talked about drills. Everybody knows what a drill is—actually that cuts a hole; is that correct?
A. Yes.
Q. How about reamers and taps, what are they?
A. The reamer is a tool that is tapered to three-quarters of an inch per foot, same as a pipe thread is—taper pipe reamer looks similar to a pipe tap, only there is no teeth on it, smooth and reams a hole taper and is smooth.
Q. So that it cuts the hole?
A. Yes.
Q. But cuts it to a close tolerance?
A. Yes.
Q. What is a tap, what does it cut, the hole?
A. Cuts thread. Does not cut the hole, but cuts pipe thread on it, according to a tolerance.
Q. Is there any other kind of tooling that goes on this machine?
A. No. That would be it.
Q. Can you judge for us, with this specific machine just how many pieces of tooling you may have for it?
A. Well, including all the chuck jaws, there can be two hundred or two hundred and fifty pieces of tooling for that particular machine, and I don't know whether you can consider changing gears for the changing of speed of anything in the machine, or changing the feed, anything like that, I don't know whether you consider that tooling. That is spare parts.
Q. Do you do that, too?
A. Yes, we do.
Q. Altogether, changing the feeding speed, the tooling and the chuck jaws and these grabbing instruments, the chucks, and the other tooling, the

taps and drills and reamers and other instruments, how many altogether might you have on that particular machine?
A. Two hundred and fifty.
Q. Can you give us an idea what the cost of the items would be for this specific machine?
A. To make the tooling chucks, the setting up, the adjusting, the trial run, getting the bugs out, working two months with two men, a total of seven hundred and twenty hours at $9.00 an hour, $6,480.00, and that is a very conservative figure.
Q. Does this include all taps and drills and everything else?
A. Yes.
Q. What is the total that this machine would cost from the beginning to the end?
A. I have a total cost on this particular machine of $37,540.00, that was our net cost, and like I said, it is very conservative.
Q. I take it to the rest of the machinery in the production department, did you do this kind of thing for each and every one of those machines?
A. Yes, each and every one.
Q. Were there some that you didn't alter in any way?
A. None of the production. We altered every one of them in the production department.
Q. Did it cost more or less for these other machines?
A. Some could have cost more, some could have cost less.
Q. But you did exactly the same thing for each and every one?
A. Basically the same amount of work was done to each one.
Q. I will ask you a specific question: did you in fact take the machine apart each and every one of the machines in your production department on the eastside of the plant?

A. Yes.
Q. Did you in fact bring the base of the machine to the westside of the street and do exactly the same thing as you mentioned, going through the process that you did just describe for each and every one of those machines on the westside?
A. Yes, we did.
Q. Now, I will ask you the question once more. I am sorry to be repetitious, but the Jury must understand it.

I will ask you again: why did you rebuild these machines on the westside rather than the eastside?
A. Because we were going to manufacture our product there and we built them in place there because we had no intention—never intended to move them. We wanted to have a good solid machine to give us years of trouble free service and make a good product so that we built them right in place to manufacture our product.
Q. Now, Mr. Lafferty, do you have an opinion as to

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—all new parts for these machines, or do you buy parts from manufacturers?
A. Wherever we can buy them from the manufacturer, we do. So long as they are able to be delivered, delivery is not too long, we will buy them. If the delivery will run into an extended amount of time, we would be better to manufacture our own. These parts for these machines might take as long as a year for delivery. In that instance, we will make the part rather than wait for a year.
Q. Did you have the capability in your own machine shop on the eastside of Bambrey Street to make everything for those machines except the base?
A. Everything, yes, with the exception of like a roller-bearing, a ball-bearing, we didn't make that, we

bought them. But any gears or shafts, we can make any of that.
Q. Do you keep a record on each machine as to how much money is put into it?
A. No, we didn't.
Q. How about this machine you discussed today?
A. Well, I happen to be one of the fellows that worked on that machine, and that is why from memory I can come to a pretty close to the actual cost of what it was. I worked on that myself personally and that is how I am able to substantiate the time involved. And I am saying that is a very conservative figure. That one particular machine, I did work on it.
Q. Do you have records?
A. No, we don't keep records. I never thought I would be questioned on that subject. That is why I never kept a record. I never knew this was going to happen here.
Q. Do you have any indication as to when you were first notified by the School District that they wanted to acquire your property?
A. I thought prior to last night, it was 1970, but I found a letter from you, Gene Brazil, in 1968. Last night I just found that letter.

I thought prior to that, it was all hearsay rumor, but I did find a letter last night dated 1968.
Q. Now, you purchased some machines in 1968, didn't you? The adjustable hacksaw?
A. Adjustable hacksaw?
Q. Yes, adjustable hacksaw. Did you purchase an adjustable hacksaw in 1968?
A. It is possible. I can't say for sure.
Q. Well, if it appears on your partnership tax return, it would be considered accurate, that you did?
A. Yes.

APPENDIX O.

Excerpts from Transcript of Criminal Trial of Commonwealth v. Charles J. Lafferty, in the Court of Common Pleas of Philadelphia County, August Term, 1977, No. 1499.

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A. No, I truthfully couldn't tell you how many hours it was.
Q. However, this was a major event, Sir, was it not?
A. Like I explained, it was a major event in my life, but it was not the most important at the time.
Q. Sir, did you spend more than three hours with Mr. Sigismonde, preparing for this trial?
A. Yes, I would say I definitely did.
Q. More than 20 hours, Sir?
A. I could not say that it was more than 20 hours.
Q. Now, Sir, it's your testimony today that you testified as to certain information at that other trial, namely, sleeve bearings and —excuse me— sleeve bearings and taper roller bearings, that you testified falsely. Is that correct?
A. Yes, I did.
Q. Sir, as to the size of the holes and the base of the machine, you testified falsely?
A. Yes, I did.
Q. And as to boring out those hubs behind the base of the machine, you testified falsely?

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A. Yes, I did.
Q. Sir, how long have you been and give me a number of years, Sir, if it's possible, how many years have you been involved in this type of work, working around heavy machinery, such as these are

components of, Commonwealth's Exhibit 18 and Commonwealth's Exhibit 19?
A. Like I said, this has been the only thing I have ever done in my whole life.
Q. How old were you when you first started working in that line of business, Sir?
A. My father used to take me down to the shop when I was two and three years old, and it seems like I have always been there.
Q. And you are now 51 years old?
A. I will be 51 this coming Wednesday.
Q. Is it fair to say you have more than 40 years experience in this trade, this line of business?
A. I would say so, yes.
Q. You would know what a taper roller bearing is, as opposed to a sleeve bearing, wouldn't you, Sir?
A. I sure would.
Q. Sir, let's talk about these machines that were

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had taper roller bearings in them. I thought I was telling the God's honest truth.
Q. Did you know you were going to testify under oath the following day?
A. Yes, I did.
Q. Did you know you were going to testify about the 11-inch Goss and De Leeuw machines?
A. At ten o'clock that night, yes, I did know I was going to testify.
Q. Did you know you were going to testify about the spindle assemblies, the sleeve bearings and the holes in the base of the machine the night before that trial?
A. I truthfully cannot say that I knew I was going to testify about the bearings and the spindles the

night before, no, I can truthfully not (sic) say that.

Q. When did you learn that you were going to testify about the bearings and spindles, Sir?

A. Some time the morning of the day I testified.

Q. And is your testimony that that morning, when you learned you were going to testify about that part of the machine, you went to the men's room and there you worked up testimony. Is that correct?

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A. That's where I finalized the figures, Yes.

Q. This case, that had developed from 1968—

Mr. Kidd: Objection. It's going to be argumentative.

The Court: And also very repetitive. Are you objecting?

Mr. Kidd: Yes, Sir, I objected in anticipation.

The Court: Objection sustained. It's argumentative and repetitive.

By Mr. Wilbraham:

Q. Mr. Lafferty, is it fair to say that when you took the witness stand and swore on the bible to tell the truth, that you weren't certain about these two 11-inch Goss and De Leeuw machines, that you were testifying about?

A. No, at that time I believed I was fairly certain.

Q. You were fairly certain about the bearings in the machine. Is that correct?

A. I was fairly certain that there was taper roller bearings in that machine.

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what the defendant's exhibit number 21 is?

A. That's a two-inch, 3000 pound forged steel pipe tee.

Q. And defendant's exhibit 22?

A. That's a four-inch 3000 pound forged steel pipe tee.

Q. Sir, when the machine was originally manufactured, what type of fitting would it produce, at that time?

A. At the time it was originally manufactured, it was able to make either one of them pieces.

Q. If you modified the original, without beefing it up, which one would you get?

A. The two-inch pipefitting.

Q. Sir, after beefing it up and making modifications, what size pipefitting can you get off of that machine?

A. All the way up to four inches.

Q. And is that basically what you mean by beefing it up, to get this type of larger product?

A. That is exactly what I mean by beefing it up.

Q. Sir, in your conversations with Mr. Sigismonde,

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up to the morning of the day you testified, do you ever recall testifying with regard to—withdraw that question.

In all your conversations with Mr. Sigismonde, from the time you engaged him, up until the morning of the trial, the second day of the trial, did you ever discuss with him taper roller bearings?

A. Not to my knowledge, No, I never did.

Q. Do you recall discussing taper roller bearings with him the morning of the trial?

A. Yes, I believe I did.

Q. Were you ever present at other conversations, when other conversations occurred, with Mr. Sigismonde, possibly from your brothers, where you ever discussed taper roller bearings?

A. I can't say for sure. I can't answer that.

Q. Sir, in preparation for your testifying at this trial, on June 17th and June 18th, 1974, did you prepare extensive notes of all the changes and modifications that you made to the machine, the Cleveland machine?
A. Yes, I did.
Q. And do you recall whether or not, with regard

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to those extensive modifications and changes, did you have listed taper roller bearings?
A. Not to my knowledge, no, I did not.
Q. Sir, in your preparation for your testimony before the board of view, or viewers, did you tell Mr. Sigismonde about the taper roller bearings?
A. No, I did not.
Q. Sir, did you testify about the taper roller bearings before the board of viewers?
A. No, I did not.
Q. Sir, did you testify with regard to reboring the holes, at the board of view?
A. Not to my knowledge, no, I did not.
Q. Sir, was the horsepower increased significantly? Well, was the horsepower increased on the Goss and De Leeuw 11 by 10-inch chucker, number 273?
A. Yes, it was doubled, from 10 to 20 horsepower.
Q. In these conversations around the stove during the entire year, were there other co-workers present with you?
A. Yes, there was.
Q. Were there other modifications and changes

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